

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2009 OF 2004

1. WMI Cranes Limited

Bhandup (West)

Mumbai - 400 078.

2. STROM-KRAFT CONTROLS,

Mumbai - 400 086

.. Petitioners.

V/s.

Kush Sitaram Chavan & 41 Ors.

.. Respondents.

Shri.P.K.Rele, Sr.Advocate with Shri.R.P.Rele i/b.

Shri.Piyush Shah for the petitioners.

Shri.N.M.Ganguli for the respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 22ND JANUARY, 2007.

ORAL JUDGEMENT :-

1. By this petition under Article 226 of the Constitution of India, the petitioners are challenging the judgement and order dated 11th March, 2004 delivered by the Industrial Court, Mumbai in Complaint (ULP) No.179 of 1997.

2. The complaint had been filed by the respondents herein is not in dispute. Further, that complaint invokes the jurisdiction of the Industrial Court, Mumbai, alleging commission of Unfair Labour Practice covered by Item 6 of Schedule II, Item 5, 9 and 10 of Schedule IV of Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act for short).

3. It would be necessary to notice the allegations and averments in the complaint for appreciating the rival contentions.

4. The respondents-original complainants alleged that the complaint is instituted on the basis that they are employees of one Strom-Kraft Controls (petitioner No.2 herein). They also claim to be employees of the orig.respondent No.2. (petitioner No.1 before this Court).

5. The complaint proceeds on the basis that the original first respondent is a partnership firm which is engaged in the business of manufacturing Control Gears and other Electrical Accessories used in cranes.

6. One Gopal Vazirani is impleaded as respondent No.3 to the complaint along with his wife Smt.Padma Vazirani on the basis that they are partners of the petitioner No.2 before me. They are husband and wife. The husband is also Chairman of the petitioner No.1 original respondent No.2.

7. The complaint proceeds to allege that the respondent No.2 i.e. petitioner No.1 before me is a company registered under the Companies Act, 1956 of which one Gopal Vazirani (respondent No.3 to the complaint) is the Chairman. It is alleged that he looks after the business activities of the firm as well. Original respondent No.5 is the Works Manager of the WMI Cranes i.e. petitioner No.1 before me.

8. For brevity's sake, the petitioners would be referred to as WMI Cranes and Strom-Kraft Controls. The undisputed position is that Strom-Kraft Controls is a

partnership firm, whereas WMI Cranes is a company registered under the Companies Act.

9. The complaint proceeds to allege that the firm Strom-Kraft Controls was employing more than 100 employees but prior to two years of the filing of the complaint, the number has been brought down to 42. The factory is at Ghatkopar. WMI Cranes is employing more than 350 employees at its factory at Bhandup. It is also employing more than 100 employees in its office.

10. The number of employees working in Strom-Kraft Controls is 42 workers at the factory, 15 staff members and 5 watchmen at the establishment/office.

11. The complaint alleges that the employees in the firm were capable of being transferred to the company and a list of about 14 employees who have been working initially in the firm but later on transferred to the company is also annexed. Similarly, it is alleged that Gopal Vazirani was looking after the overall production and business activities of both the firm and the company. The employees were inter-transferable. The complaint alleges that staff members and the Works Manager (original respondent No.5), initially working for the firm are now

working for the limited company. Thus, there is absolute functional integrality, common management and general unity as far as the firm and the limited company is concerned.

12. Even the employees from the factory are transferable. However, it is alleged that by a letter dated 21st April, 1996, the firm informed the employees working in the factory that w.e.f. 21st May, 1996 the activities of the firm would be closed down and the reason assigned for the same was tough competition in the market. It is alleged that these reasons are false, mala fide and untenable in law.

13. It is alleged that the complainants are members of a Trade Union having its office at Kandivali (West), Mumbai and the said union filed a complaint of unfair labour practices under Items 9 and 10 of Schedule IV of MRTU & PULP Act before the Industrial Court, Mumbai being Complaint (ULP) No.689 of 1996. They impugned the illegal and mala fide lock-out in the guise of closure notified by the respondents under their notice dated 21st April, 1996.

14. It is alleged that at the relevant time, the firm was employing more than 50 workmen including clerical

staff but there is complete non compliance with the requirement of Sec.25-FFA of the Industrial Disputes Act, 1947. The closure is therefore illegal on this ground also.

15. According to the complainants, the company and the firm were jointly employing more than 420 workmen in their factories and therefore, Chapter VB of the Industrial Disputes Act, 1947 was applicable. Therefore, requirement of permission prior to effecting the closure was necessary and even that is not obtained.

16. It is alleged that the first respondent firm has not closed down its activities despite the above notice. The manufacturing activities are still going on at different places. The partnership firm was also not dissolved. For all these reasons, the closure of the business by the firm is mala fide and illegal. In fact, if the business operations are still continuing, then, this amounts to nothing but an illegal lockout. Such a lockout could not have been effected without compliance with the provisions of the Industrial Disputes Act, 1947 and the MRTU & PULP Act. In such circumstances, the complainants be allowed to resume their duties.

17. In Para 3 (h) of the complaint this is what is alleged :-

"(h): The Complainants state that the said Union, Maharashtra Association of General Workers challenged the illegal and malafide lockout by filing complaint before the Industrial Court and during the pendency of the complaint the union advised the Complainants to accept their terminal dues. Accordingly, the Respondents paid terminal dues of the employees by two installments. The Respondents paid the First installment of the terminal dues on 20th May, 1996 and the Second installment was paid on 27th June, 1996. The Complainants state that the Respondents 3 to 5 gave an assurance in the presence of the Complainants and the President of the said union that all the employees shall accept their terminal dues and after three months from the acceptance of the terminal dues all the employees working in the factory and office of the 1st Respondent firm would be

absorbed as fresh employees in the employment of the 2nd Respondent company and the 2nd Respondent would give work to all the Complainants commensurate to the designations and skill the employees had in the factory of the 1st Respondent firm and wages would also be protected after absorbing the Complainants in the employment of the 2nd Respondent company. The Complainants state that as per the assurances given by Respondent No.3 to 5 and the President of the Union the Complainants accepted the terminal dues in two installments. The Complainants state that all the clerical, supervisory staffs working in the factory and office of 1st Respondent firm are now working for Respondent No.2 on the same grades and wages. The Respondent No.5 who was the employee of 1st Respondent firm is now also working as Works Manager of Respondent No.2 on the same grade and wage scale. The Complainants state that as the Respondents No.3 to 5 assured them that after three months of accepting their

legal dues they would be absorbed on the same grade and wage scale in the 2nd Respondent company they accepted their terminal dues and after three months they repeatedly approached the Respondent No.3 and 4 and requested them to implement the settlement/agreement and assurances given by them at the time of paying the terminal dues to the Complainants. The Respondent No.4 time and again told the Complainants that she would consult her husband, Respondent No.3 and accordingly inform the decision to the Complainants and called the Complainants to her residence after every 15 days. The Complainants state that they were forced to run from pillar to post for the last 6 months and the Resondent Nos. 3 and 4 kept on promising but they failed to implement their assurances, settlement and agreement. The Complainants state that they have now lost faith in Respondent Nos.3 and 4 accordingly they approached their union to take up their matter before appropriate Court, but the union expressed its

inability to do anything in the matter. Therefore, the employees are filing the present complaint in their individual capacity."

18. Although, it is not disputed that the terminal dues were paid to the complainants but it is alleged that while making the said payment, the respondents obtained the signatures of the complainants on a stamped receipt and some typed papers. These were signed by the complainants in token of the receipt of payment and as instructed by their union. It is alleged that the complainants are not aware of the contents of the said letters as also receipts as both are in English language. In Para 3 (j) of the complaint, it is alleged that the complainants were under the bonafide belief that the respondents would absorb them in the employment. It is alleged that some staff members were allowed to join the duties of the company and their services were absorbed accordingly. However, the assurances as far as the workmen and the complainants specifically are not abided by the original respondents.

19. In the light of the aforesaid contentions and allegations, the complainants impugned the notice dated

21st April, 1996 and the closure according to them of the activities after 21st May, 1996 is bad on the grounds more specifically set out in the complaint. It is alleged that such a treatment was given to the complainants only because they organised themselves and formed a union and therefore the action of the petitioners amounts to commission of unfair labour practices under the Items more specifically referred to by me in the foregoing paragraphs.

20. It is on these allegations that the complainants prayed that the Industrial Court should declare that the petitioners before me have engaged in unfair labour practices under Items 6 of Schedule II, Items 9 and 10 of Schedule IV of MRTU & PULP Act and directions be issued to withdraw the said unfair labour practices and cease from indulging in the same. The lockout being illegal should be directed to be raised or lifted and the complainants be allowed to resume their duties is also the prayer. These are the complainants allegations. The complaint was filed on 28th February, 1997.

21. It is not necessary for me to refer to the contents of the application for condonation of delay and interim relief.

22. At this stage, it would be proper to refer to the Written Statement which is filed on behalf of the firm Strom-Kraft Controls. As far as the employment of the complainants with this Storm-Kraft Controls, which is a partnership firm, is concerned, the relationship of employer-employee at the relevant time was not denied. However, it was specifically contended in the Written Statement and more particularly in Para 2 thereof that the firm was finding it difficult to survive in the light of the cut throat competition. Therefore, the manufacturing activities were decided to be closed down w.e.f. 21st May, 1996. A Notice was displayed on 21st April, 1996 to that effect. The workmen were clearly informed that their services would not be required and they stand terminated w.e.f. 21st May, 1996. Due to closure of the manufacturing activities, they were told to collect their legal dues. The firm sent a copy of the notice to the Commissioner of Labour, Mumbai as well as President of the Maharashtra Association of General Workers, a Union of which the complainants and the workmen are members.

23. The specific case in the Written Statement of the firm is that upon receipt of the notice dated 21st April, 1996, the President of the Union approached the partner of

the respondent firm on 10th May, 1996 and requested him to withdraw the said notice of closure. However, the President of the Union was informed about the events leading to the notice and the reasons for issuance of the same. There was prolonged discussion after which a Voluntary Retirement Scheme was framed. The minutes of the meeting dated 10th May, 1996 would reflect the discussion and the scheme. Thereafter, a notice was displayed on 14th May, 1996. The said notice gave the details of the scheme of Voluntary Retirement, the monetary benefits which the workmen will be getting if they accepted the same and the time within which the amounts would be disbursed. It is pointed out that after the notice was displayed, all workmen of the firm approached it and gave letters stating that they are opting for Voluntary Retirement under the scheme. They requested the firm to accept their applications in that behalf. The firm, accordingly informed each of these workmen that their applications for retirement under the scheme are accepted. In two instalments, the legal dues were paid. The first instalment was paid on 21st May, 1996 and the second was to be paid on 25th June, 1996. That date was extended till 5th July, 1996 on the request of the President of the Union.

24. It is, therefore contended that in view of the workmen having retired under the scheme, the notice dated 21st April, 1996 regarding closure of manufacturing activities was kept in abeyance. All workmen who applied for payment of gratuity were paid the same and all 42 workmen have retired under the scheme. They issued a receipt in favour of the petitioner No.2 firm after availing of the benefits of the scheme.

25. It is in these circumstances that the firm contended that it had not committed any unfair labour practices. It proceeded to deny each and every allegation and averments in the complaint. As far as the allegation in Para 3 (a) are concerned, they were specifically denied in the Written Statement. The allegations in Para 3 (b) of the complaint were also denied. A reference can be made to Para 13 of the Written Statement in that behalf. At this stage itself, it would be advantageous to reproduce the contents in Para 13 of the Written Statement in so far as the assurances of absorption of the employees/workmen in the limited company. The said denial reads thus : -

"13: It is denied that the Respondent Nos.3 to 5 gave assurances in the presence of the

Complainants and the President of the said Union that the employees shall accept their terminal dues and after 3 months thereon all the employees working in the factory and of the Respondent Company would be absorbed as fresh employees in the employment of the Respondent No.2 and the Respondent No.2 would give the work to all the complainants commensurate to the designation and services of the employees in the factory of the Respondents Company and the wages would also be protected after absorbing the Complainants in the employment of the respondent No.2 as alleged."

26. The firm therefore denied that it has to reinstate anybody. According to it, there is no unfair labour practice much less the one alleged under the Items referred to above. The Written Statement which was filed on 15th June, 1996 on behalf of the firm proceeds on the above basis.

27. The Written Statement of the limited company is also on record. The company had categorically raised the issue of maintainability of the complaint on the ground that as far as the company is concerned, there is no employer employee relationship between the complainants

and the original respondent No.2 company. The company has distinct identity of its own in law. A partnership firm and a limited company cannot be equated with each other. There is no question of the company being obliged to take into services anybody. None of the Items of the Schedules to the MRTU & PULP Act are attracted. In Para 13 of the Written Statement, the company pointed out the nature of its business, number of workmen employed, the location of its factory and other details. The company does not deny that Gopal Vazirani is its Chairman and said Gopal Vazirani is also a partner of the firm M/s.Strom-Kraft Controls. However, the nature of activities carried out by the company and the firm are entirely different. It is denied by the company that there is a functional and financial integrality. The workmen of the firm and the company are doing distinct work. No workmen of the firm has ever worked with the limited company. Their service conditions are different. The firm has its own management. The company had never employed anybody out of 42 workmen/complainants. There is no question of any master and servant relationship being in force. All allegations in the complaint have been denied.

28. It is also pointed out in the Written Statement (Para 13) by the company that there is no assurance as far

as the respondent No.2 i.e. the limited company is concerned. Thus, neither the question of any direction being issued by the Court to absorb the employees/complainants with the limited company arises nor they being permitted to resume their duties.

29. It was clarified in the Written Statement that some staff members of the firm may have been absorbed by the company but there is no question of absorption of the workmen at all. For all these reasons, it was prayed that the complaint be dismissed.

30. The allegations in the complaint and the denials so also pleas in the Written Statement raised several issues and therefore the Industrial Court framed the same accordingly.

31. Thereafter, oral evidence was recorded. As far as the complainants are concerned, one Kush Chavan stepped into the box so also one Vinod Acharya. They have been cross examined at length.

32. As far as the respondents before the Industrial Court are concerned, one Gopal Vazirani stepped into the witness box and he was cross examined by the complainants'

advocate.

33. During the course of recording all these depositions, number of documents were taken on record and exhibited. These include the minutes of meeting so also the notice.

34. After the evidence was closed, the learned Member of the Industrial Court heard oral arguments and by his judgement and order referred to above he held that the petitioners are guilty of the unfair labour practices enumerated in his order and therefore the complaint is liable to be allowed. After allowing the same, the learned Member directed both the petitioners to take back the complainants in the employment as fresh employees in either of their establishments within the period of two months from the date of his order.

35. Writ Petition No.2009 of 2004 is filed by the firm and the company to assail this order, whereas Writ Petition No.2449 of 2004 is filed by the original complainants to challenge that part of the order of the Industrial Court whereby it directs, both, i.e. the firm and the company to reinstate the complainants. Shri.Ganguli, learned Advocate appearing for the

respondents states that the original complainants had pressed for reinstatement of their services with the firm and the directions as issued by the Industrial Court be modified accordingly.

36. Shri.Rele, learned Sr.Advocate appearing for the company and the firm in Writ Petition No.2009 of 2004 has firstly contended that the judgement of the Industrial Court is vitiated by serious errors of law apparent on the face of the record. He submits that the learned Member has completely misdirected himself in as much as by his judgement and order, he has created an employer employee relationship when none exists on facts and in law. He submits that the company cannot be told or directed in law to reinstate anybody. There is no question of the company being directed to absorb the original complainants. He submits that the complainants have referred to the notice dated 21st April, 1996. That notice clearly sets out the facts and circumstances leading to the closure of the manufacturing activities of the firm w.e.f. 21st May, 1996. Shri.Rele submits that it is not as if the complainants are unaware of the scheme of Voluntary Retirement because they have referred to the minutes of the meeting held on 10th May, 1996. He submits that Shri.Prasanna Pawar is the President of the Maharashtra

Association of General Workers. This union represented all workmen of Strom-Kraft Controls and at a meeting of its President with the firm, the Voluntary Retirement Scheme was proposed and discussed and later on approved and accepted. Thereafter, Shri.Rele has invited my attention to Cl.(j) of the minutes of meeting which records that the workmen shall have no right of reinstatement or re-employment with the firm. He submits that the minutes, thus cull out a scheme of Voluntary Retirement, the duration of the same and the benefits thereunder. The minutes are not at all challenged. They are in fact signed by both the representative of the firm Smt.Padma Vazirani and Shri.Prasanna Pawar. Thereafter, Shri.Rele has invited my attention to the notice dated 14th May, 1996 and the receipts which are also on record of the proceedings before the court below. He submits that the applications were made by the workmen for Voluntary Retirement which have been accepted by the firm. The employees concerned have been retired from the services with effect from the date of receipt of the communication of the company in that behalf. He also invites my attention to the contents of the receipts which have been executed by the workmen in favour of the company acknowledging and accepting the receipt of the various sums pursuant to this Voluntary Retirement Scheme. He

submits that this Court must consider the averment in Para 3 (h) of the complaint and the so called assurance which has been given for absorbing the services of the complainants in the backdrop of the receipt. He submits that the Industrial Court has proceeded upon conjectures and surmises when the averments in the complaint are absolutely vague. They are silent with regard to the relevant and pertaining details. Nowhere in the complaint, it is mentioned that who gave the assurance and on what date leave alone the nature of the assurance. On the premise of such vague allegations, there could not have been any direction to reinstate the employees/original complainants. He submits that there is no finding in the entire judgement and order with regard to any functional integrality. In this behalf, he has invited my attention to the finding of the Industrial Court in Para 18 of its judgement. He submits that there is absolutely no assurance and the evidence which is on record has been completely brushed aside. He submits that from the cross examination of the witnesses examined by the complainants, it is clear that the employees have failed to make out any case of unfair labour practices.

37. Assuming without admitting that so called assurance can be spelt out even from the oral depositions,

yet, the complainants in their deposition apart from naming persons including the Managing Director Gopal Vazirani and his wife have not stated anything. He has invited my attention to the evidence of the workmen in this behalf. That apart, according to him, the so called assurance which is contended in the resolution dated 15th April, 1996 pertains to only staff members and not the category of workmen. Shri.Rele submits that the judgement and order be set aside because the Industrial Court failed to take into account the fact that the President of the Union Shri.Prasanna Pawar, who was a party to all negotiations and discussions so also signatory to the minutes has not been examined by the complainants. His non examination is fatal. In such circumstances and when there is complete lack of pleadings with regard to the unfair labour practices alleged, this is a fit case for exercise of writ jurisdiction. In support of his submissions, Shri.Rele has relied upon several decisions of the Supreme Court which lay down the principle about the consequences of a Voluntary Retirement Scheme. He submits that the very nature of the scheme is such that an offer is made in terms thereof and its acceptance thereafter leads to a concluded contract between the employer and the employee. Such relationship is not governed by any statute but the Contract Act alone would

apply. He has also relied upon decisions of the Supreme Court wherein a principle is laid down regarding the jurisdiction of the Labour and Industrial Courts and tribunals to grant reliefs in such disputes. According to Shri.Rele, there is no question of directing reinstatement in a distinct entity. Once there is complete lack of functional integrality, then, no question arises of issuance of any directions to the respondent No.2 i.e. the limited company which is the first petitioner before the court. Similarly, when such is the nature of the grievance, then the Industrial Court was bound to decide the issue of employer-employee relationship and only then direct reinstatement of the original complainants in the firm.

38. Shri.Ganguli on the other hand has supported the impugned Judgement and order. Shri.Ganguli submits that the petitioners before me are one and the same. He has invited my attention to the verification clause of this petition and thereafter the averments in the complaint and contends that whatever may be the arrangement between the firm and the limited company, the same cannot take away the rights of the original complainants. More so, when the original complainants are not precluded in law from filing the complaint alleging unfair labour practices

against the firm as well as the company and claiming reliefs on that basis. He submits that the partners and directors of the firm and the company are one and the same. The product is manufactured by the firm for the company. It is only a part of the establishment which is required to be closed down. Therefore, Shri.Ganguli was at pains to point out that there is no closure. There is no notice of lockout. It is mere shifting of the business operations from one premises to another. The firm is not dissolved and its existence continues in law. Similarly, on the basis of the averments in the complaint, Item 9 of Schedule IV of MRTU & PULP Act is attracted.

39. Shri.Ganguli points out that the petitioner No.1 is manufacturing cranes whereas the petitioner No.2 manufacture parts of the cranes. He submits that the petitioners 1 and 2 are therefore common establishments and the decision of the Hon'ble Supreme Court in the case of **Associated Rubber (AIR 1986 Supreme Court Page 1)** would apply to the facts of the present case. The facts as also the legal question involved are identical.

40. He submits that it has come on record that the activities of the firm are still going on despite the notice and the so called closure/Voluntary Retirement

Scheme. He submits that these actions of the original respondents, petitioners before me, should be viewed seriously as devices adopted to get rid of the workers. Such devices are adopted by employers to defeat the right of the workers. He submits that when denial of work or assigning duties is established then it is nothing but a lockout. He has invited my attention to the evidence and contended that all ingredients of the schedules and the items enlisting the unfair labour practices are satisfied. This is not a case of an unconditional acceptance of Voluntary Retirement Scheme but acceptance is conditional upon assurances of absorption of services in the limited company. Therefore, item 9 of Schedule IV is attracted. He submits that all arrangements are camouflage and bogus. He submits that the Industrial Court was therefore right in allowing the complaint and issuing the directions in its ultimate and operative order. That apart, according to Shri.Ganguli, if this court is of the view that modifications have to be made, then, in exercise of its writ jurisdiction it can always do so, but, by reading the operative part of the order, it cannot be said that the Industrial Court's judgement is vitiated in any manner. He submits that Shri.Rele's contentions deserve to be rejected straightaway once the Industrial Court has concluded after appreciation of all materials on record

that there was an assurance that the workers will be taken in the employment of the company as fresh employees after a period of three months, then, the Judgement and order of Industrial Court requires no interference. Shri.Ganguli has supported the reasoning of the learned Member when he he deserves support from the absorption of the staff members of the firm by the limited company.

41. With the able assistance of Shri.Rele and Shri.Ganguli, I have perused the complaint, the written statement, the oral and documentary evidence on record, relevant statutory provisions and the decisions relied upon.

42. It is not necessary to make any detailed reference to all decisions in the field because in my view, the present case would turn on its own peculiar facts. The undisputed position emerging from the materials which have been produced on record is that the firm is the employer of the original complainants. The firm was manufacturing the products at its factory at Ghatkopar. It has employed about 42 workers and 15 staff members. It is this firm in which the original complainants were working and organising themselves. They are members of the Union of which one Prasanna Pawar was President. It is further

undisputed that a notice was displayed on 21st April, 1996 by this firm. The contents of the notice displayed are that the firm is finding it difficult to compete with the competitors in the market. Some new units have come up which are manufacturing similar items and offering them on lesser rates in the market. The partners, therefore, decided to close down the manufacturing activities w.e.f. 21st May, 1996. The workmen were informed that their services would not be required w.e.f. 21st May, 1996 and would stand terminated. Due to closure of manufacturing activities, they cannot be paid closure compensation and other legal dues as per law. They were advised to collect the terminal dues before the last working day.

43. It is also not in dispute that pursuant to the notice being displayed, a meeting took place between the representative/President of the Union and that of the partnership firm. The notice of closure is clearly referred to in the minutes of meeting along with the reasons therefor. The minutes record that the union was fully aware of the situation as the matter was discussed on several occasions. Shri.Prasanna Pawar requested the management to keep in mind that the long services rendered by the workmen should be rewarded and considered so that a Voluntary Retirement Scheme can be proposed and framed

giving them extra benefits. Considering the relationship between the parties, the minutes proceed to record the agreement that Voluntary Retirement Scheme would be displayed on 14th May, 1996 and the workmen would be paid the benefits as stipulated therein. This scheme is on the basis that the workmen shall have no right of reinstatement or re-employment with the company.

44. That notice dated 14th May, 1996 containing the scheme was displayed is also not in dispute. The scheme was to remain in operation from 14th May, 1996 to 18th May, 1996 both days inclusive. The scheme offer the following benefits.

THE SCHEME

1. This Scheme shall be called as Strom Kraft Controls Voluntary Retirement Scheme, 1996.

2. This Scheme is a purely Voluntary Scheme. The Workmen at their sole discretion may or may not opt for it.

3. This Scheme will be in operation from 14.05.1996 to 18.05.1996 both days inclusive.

4. The workmen who accept the Scheme shall be paid the following monetary benefits;

a) Gratuity @15 days wages for every completed year of service or part thereof in excess of 6 months. Under the Provisions of the Payment of Gratuity Act, 1972.

b) Retirement benefit @25% days wages for every completed year of service or part thereof in excess of six months (for calculation of wages for this clause, the wages means only Basic wages and Dearness Allowance as per the agreed terms with the Management and the Union).

c) Leave wages upto date.

d) Bonus upto date as payable under the Payment of Bonus Act, 1965.

5. A workmen desirous to accept this Scheme shall have to make an application in the prescribed form available at the office. A specimen copy of the application form is annexed

hereto.

6. The Management may or may not accept all or any of the application received by it at its sole discretion without assigning any reason. The Management's decision in this regard shall be final and cannot be questioned.

7. The workmen whose application is accepted by the Management shall be intimated either personally or by registered A/D letter.

8. The payment of the monetary benefit under this Scheme will be in two installments. The 1st installment shall be paid on 20.05.1996 and the 2nd and final installment will be made on or before 25.06.1996.

9. The service of the Workmen who applies for Voluntary Retirement shall come to an end on the date of intimation to him about the acceptance of his application.

10. The benefit of this Scheme shall not be available to the Workmen who resigned, retired or

whose services have been terminated for any reason whatsoever prior to 11.05.1996 or after 18.05.1996."

45. The Scheme itself stipulated that only workmen desiring to accept the Voluntary Retirement Scheme shall make an application in the prescribed form available at the office. The Management may or may not accept the application received and such decision is at its sole discretion. The Management may reject the application without assigning any reason. The manner of making the application and its acceptance is also set out. The scheme postulates payment of monetary benefits in two instalments. Cl.9 of the Scheme stipulates that the service of the workmen who apply for Voluntary Retirement shall come to an end on the date of intimation about the acceptance of the same.

46. In this behalf, Shri.Rele's reliance upon the decision of the Supreme Court in the case of **HEC Voluntarily Retd. Employees Welfare Society and another v/s. Heavy Engineering Corporation Ltd. and others** reported in **[2006 (109) FLR 355] (Supreme Court)** is correct. The Supreme Court while explaining the concept of Voluntary Retirement has made the following pertinent

observations : -

"10: An offer for voluntary retirement in terms of a scheme, when accepted, leads to a concluded contract between the employer and the employee. In terms of such a scheme, an employee has an option either to accept or not to opt therefor. The scheme is purely voluntary, in terms whereof the tenure of service is curtailed which is permissible in law. Such a scheme is ordinarily floated with purpose of downsizing the employees. It is beneficial both to the employees as well as to the employer. Such a scheme is issued for effective functioning of the industrial undertakings. Although the Company is a "State" within the meaning of Article 12 of the Constitution of India, the terms and conditions of service would be governed by the contract of employment. Thus, unless the terms and conditions of such a contract are governed by a statute or statutory rules, the provisions of Contract Act would be applicable both at

the formulatiion of the contract as also the determination thereof. By reason of such a scheme only an invitation of offer is floated. When pursuant to or in furtherance of such a voluntary retirement scheme an employee opts therefor, he makes an offer which upon acceptance by the employer gives rise to a contract. Thus, as the matter relating to voluntary retirement is not governed by any statute, the provisions of Indian Contract Act, 1872, therefore, would be applicable to. See Bank of India and others v. O.P.Swarnakar and others.

12: We have noticed hereinbefore the benefits admissible under the scheme. The employee offering to opt for such voluntary retirement, not only gets his salary for the period mentioned therein but also gets compensation calculated in the manner specified therein, apart from other benefits enumerated thereunder.

17: The voluntary retirement scheme

speaks of a package. One either takes it or rejects it. While offering to opt for the same, presumably the employee take into consideration the future implication also.

18: It is not in dispute that the effect of such voluntary retirement scheme is cessation of jural relationship between the employer and the employee. Once an employee opts to retire voluntarily, in terms of the contract he cannot raise a claim for a higher salary unless by reason of a statute he becomes entitled thereto. He may also become entitled thereto even if a policy in that behalf is formulated by the Company."

47. One Kush Chavan undisputedly applied for Voluntary Retirement Scheme by his application dated 18th May, 1996 and in his application itself he has stated that the contents of the company's Voluntary Retirement Scheme have been read over and explained to him by one Shri.Mirani in Hindi/Marathi. He states that he has completely understood the contents of the scheme and the implications

as far as he is concerned. After fully knowing the same, he has decided to opt for V.R.S.

48. His application was accepted on 29th May, 1996 and accordingly he collected his dues and issued a receipt in favour of the firm.

49. In my view, the contents of these documents completely falsify the allegation of the complainants that they were not aware of the V.R.S. or the impact of the clauses therein on their services. The effect and consequences of the V.R.S. on their own showing was known to the complainants and this conclusion can safely be drawn from the admitted documents including the application for V.R.S. and the receipt. Once, the V.R.S. contains a clause that acceptance of the offer of the company/firm would bring about a cessation of relationship of employer with the employee, then, in my view, it is futile to allege that the services continue or that the complainants have a right to claim reinstatement. In fact, the contents of the receipts are that in view of the payment made by the company under the scheme of V.R.S., the workmen have no claim of any nature whatsoever against the company for reinstatement and or re-employment.

50. It is therefore surprising that the complaint of the workmen alleging unfair labour practices was entertained and tried in great details by the Industrial Court. In my view, the Industrial Court completely lost sight of the undisputed factual position emerging from the documents, contents of which are also not in dispute. It is in such circumstances that I have taken note of the contentions of Shri.Rele and I find much substance in them. A perusal of the judgement of the Court below would demonstrate that the learned Member has ignored the contents of these admitted documents and without any materials being produced discarded the same. There is no warrant in holding that the documents on record so also the depositions of the witnesses on behalf of the witnesses company would have to be read between the lines. Such question would arise only if there is an attempt to take the Court away from the real issue. Here, the Industrial Court was fully aware of the allegations in the complaint, the denial of the same by the company as also the firm and the admitted factual position. Once it was so aware, then, its bounden duty in law is to decide whether the complainants have proved their case. Thus, all workmen who were parties to the complaint having taken Voluntary Retirement and accepted all sums in full and final settlement of their claims, whether any grievance of

unfair labour practice could be raised by them and relief of re-instatement and backwages claimed on that basis should have been considered, at the outset, by the Industrial Court.

51. The learned Member ought to have been aware of the fact that V.R.S. is a contract between parties. It being acted upon the relationship is snapped between the employer and employee. That such a scheme was proposed during pendency of another Complaint (ULP) is not in dispute. Its existence and execution is not denied. Therefore, the complaint itself could not have been entertained. In this behalf, I have perused the averments and allegations in the complaint. The complaint alleges that assuming there is some agreement between the parties and in pursuance of which workmen have retired voluntarily, yet, implicit in this arrangement /agreement is an assurance that the workmen of the firm would be absorbed in the limited company. In other words, despite closure of the manufacturing activities of the firm, the employment of the complainants would continue and they would be absorbed as the employees of the limited company is the basis of the allegations in the complaint. There is much substance in the criticism of Shri.Rele that no particulars of such assurances are set out.

52. With the assistance of both sides, I have perused the Notice dated 21st April, 1996, the Minutes of the Meeting with Union and the scheme. None dispute that these documents do not contain any assurances. Therefore, it was incumbent upon the complainants to urge and demonstrate by leading cogent and satisfactory evidence that a assurance has been given by the management of the firm that despite closure of its activities, the employment of the complainants continues and they would be absorbed in the services of the first petitioner, namely, the second respondent before the Industrial Court.

53. In that regard, what we have on record is a true copy of the resolution passed by the Board of Directors at a Meeting held on 15th April, 1996. These minutes read thus : -

MINUTES OF MEETING

"It has been decided by the Board of Directors that as a Policy, we will give preference of a Job to those Staff Members who have previous experience with Strom Kraft Controls.

Depending upon the requirement of Personnel, preference will be given to Ex-employees of Strom Kraft Controls but purely on Merit, Qualification and also on the clear understanding that fresh terms and conditions as applicable to WMI Staff will be applicable to them.

The Personnel Dept. is authorised to issue necessary appointment letters to such qualified personnel as may be required."

54. A bare perusal of this document would indicate that the Board of Directors of the limited company have as a policy decided to give preference in job to those staff members who have previous experience with the firm, namely, Strom Kraft Controls. The minutes state that depending upon the requirement of the personnel, preference will be given to the Ex-employees of Strom Kraft Controls but purely on merit, qualification and also on clear understanding that fresh terms and conditions as applicable to WMI Staff would applicable to them.

55. Thus, this cannot be construed as any assurance of absorption, leave alone, automatically. The conclusion of absorption is drawn by relying on these Minutes heavily. This is a document whereby preference in job was to be given to staff members. No evidence is led to show that the words "staff members, Ex-employees of Strom Kraft Controls" would include entire personnel and that means workmen as well. Assuming without admitting, as Shri.Rele would contend, that workmen are included, the minutes, read as a whole do not contain any assurance of automatic absorption but consideration of applications and that too if they satisfy the requirement of merit and qualification. Lastly, execution of fresh terms and conditions is also a matter to be finalised depending upon satisfaction of the limited company. It is a relevant aspect of the matter. Hence, by no stretch of imagination, these minutes could be termed as an assurance of absorption in the services of the limited company. Therefore, not much can be derived from the fact that the operations of the firm are still continuing or some staff members are reporting for work so also some of them have been absorbed in the services of the limited company. By such allegations, the complainants would not be able to succeed.

56. If the oral evidence is then considered, what we have on record is, firstly, the deposition of the Chairman of WMI Cranes. He states that the firm was manufacturing small items like electric switches and other electrical controls and equipments. Its factory was situate at Ghatkopar. After referring to the decision of the Board of Directors and the partners, it is stated by the Chairman in his deposition that there was no assurance, discussion in meeting between the complainants and the company regarding the absorption of the employment of the respondent No.2. Thus, there is complete denial of any assurance either on behalf of the firm or on behalf of the limited company. He specifically denies the suggestion that the workmen occassionally met him or his wife and the Works Manager and they assured the complainants that they would be absorbed in the employment of respondent No.2 company. Para 3 of his deposition in lieu of examination-in-chief itself is clear.

57. The complainants were not able to elicit anything in the cross examination of the Chairman. All that is admitted by him is that the partnership is not dissolved and the business of the firm is still going on. However, apart from some transactions between the firm and the company and the above admissions, the Chairman has not

spoken of any assurance. On the other hand, he has given details of the employees working at Bhandup company of the limited company. He says that only 5-6 employees were working at Bhandup. He states that the office of the respondent No.1 is situate at Bhandup in the premises of the limited company but beyond that each and every suggestion has been denied by him. The fact that he was ignorant about the number of employees employed by the firm and the further details would not make his testimony totally untrustworthy or unbelievable.

58. His deposition, is therefore, of no assistance in holding that there is any functional integrality or that there was any assurance of absorption. In fact in Para 7 of his deposition, he states that after 14th May, 1996 the firm appointed 4 to 5 workers on contract basis to carry on the manufacturing activities. Thus, his cross examination at length by the complainants is not of much assistance.

59. As far as the deposition of witnesses examined by the complainants is concerend, in the examination-in-chief of Kush Chavan, itself, it is clear that during the pendency of the Complaint (ULP) No.689 of 1996, the union advised him and the other complainants to accept their

terminal dues. It was paid in two instalments. Para 9 of his deposition speaks of the acceptance of the terminal dues and thereafter he speaks of assurance given to the employees. However, if this deposition is read carefully, he does not speak of any assurance of absorption but speaks of an assurance of continuing the employment with the firm. In Para 9, the relevant portion of his deposition, reads thus : -

"I say that during the pendency of Complaint (ULP) No.689 of 1996, the said union advised me and the other complainants to accept their terminal dues, accordingly the Respondents paid terminal dues of the complainants by two installments. The Respondents paid 1st installment on 20.05.1996 and the 2nd installment was paid on 27.06.1996. I say that while paying the terminal dues the Respondents No. 3 to 5 gave the assurance to all the employees that all the employees would be provided employment with the 1st respondent firm after 3 months of the final payment of the terminal dues as fresh employee, but

without any adverse effect on the pay scale of the employees. It was assured by the said Respondent No.3 to 5 that work to all the Complainants would be provided commensurate to their designation and skills and wages of the employees would be protected after absorbing the Complainants in the employment of the 2nd Respondent company. I say that as per the assurances given by the Respondents No.3 to 5, the President of the said union advised us to accept the terminal dues in two instalments. Therefore, we accepted the terminal dues. I say that after the payment of 2nd instalment all the clerical and supervisory staff on the roll of the 1st Respondent firm working in the office were absorbed in the employment of the 2nd Respondent on the same grades and wages they were having prior to absorbing them in the employment of the 2nd Respondent company. I say that 5th Respondent was also absorbed in the employment of the 2nd Respondent company and except the 5th Respondent all other employees who were

absorbed by the 2nd Respondent company are still in the employment of the 2nd Respondent company."

60. In Para 10 of his deposition, he states that because of the assurances given by the respondents they accepted the terminal dues. Thereafter, he speaks of approaching Smt.Padma Vazirani and reminding her of the assurance. It is on the assurance by Smt.Padma Vazirani, namely, continuation in the service of the first respondent firm that a decision was taken to file the complaint. A statement is made in the deposition that the complainants approached Smt.Padma Vazirani and requested her of fulfilling the assurances given by her in the employment of the services in the limited company. The answer given by Smt.Padma Vazirani is that she would consult her husband and give a reply. In my view, without any foundation being laid in the pleadings, this statement in the oral deposition without anything more is of no assistance. Thus, the deposition is at divergence with the pleading. That apart, the allegation of functional integrality and assurance of absorption is also not proved during oral evidence.

61. I am unable to accept the contentions of

Shri.Ganguli that there was any assurance and it was demonstrated that there is complete integrality between the operations of the firm and the limited company. I have pointed out the distinct manufacturing activities and the other features including the staff pattern. I am unable to cull out any integrality, functional and financial. Similarly, from the deposition of Kush Chavan, I am unable to conclude that any assurance was given of absorption. In the cross examination, he admits thus : -

"It is correct to say that the respondents have issued all the workers including myself and served the copy of closure dated 21.04.1996."

62. He admits that the document shown to him is the copy of the said closure notice. This witness goes further and states that he would not be able to tell whether the signatures and hand writing are his own without going through the original. He denies the Memorandum of Understanding regarding V.R.S. between the union led by Prasanna Pawar and the company. His deposition before the Industrial Court, to my mind does not inspire confidence at all. He attempts to put a different interpretation on the contents of the documents

but in the absence of any basis or foundation in that behalf in the pleadings, it would not be safe to rely upon his testimony. A reference to Para 16, 17 and 18 of his deposition support my above conclusion.

63. In fact, the witness states that the workmen working in the limited company were members of the other union and he does not know their service conditions. He has also shown his ignorance with regard to the terms and conditions based upon which the staff members of the firm have been absorbed by the limited company. In fact, he goes ahead and states that "I am unable to explain the words used in my affidavit filed in lieu of examination-in-chief and that there was financial and functional integrality." As far as assurances are concerned, para 19 of his deposition reads thus : -

"I am unable to tell exact date as to when our discussion took place with respondent No.3 and 4."

64. In the light of such a deposition, the Industrial Court could not have concluded that the issue of functional integrality or assurance given orally is proved by complainants. Similar is the testimony of the other

witnesses and it is not necessary to refer to it in any further details.

65. In the light of this material, I find that the inferences drawn by the Industrial Court in Para 17 are patently unsustainable. As to how the petitioners or their witnesses could be held guilty of hiding the true facts is not clear to me at all. The whole basis of the criticism of the Industrial Court is fallacious and unsustainable. There are no contradictions in the Memorandum of Understanding or other documents including the scheme. How the evidence of the respondents i.e. the petitioners before me helps in proving the case of the original complainants is also not clear to me at all. The Board Resolution dated 15th April, 1996 and other documents placed on record have been referred to me in great details to arrive at a conclusion that the Industrial Court's order can safely be termed as perverse. This is not a satisfactory manner of dealing with a complaint containing serious allegations of unfair labour practices. The Industrial Court ought not to have drawn inferences and final conclusions without adverting to the documents placed on record and deposition of the parties. It is in this light that I find that the criticism levelled by Shri.Rele about the approach of the learned

Member is justified. The learned Member is in complete error in holding that no consideration could be given to the oral evidence of the petitioners before him so also documentary evidence as the petitioners /original respondents are deliberately hiding the truth.

66. The conclusion, drawn in para 18, with regard to the lockout is also unsustainable. Merely because the business activities of the firm are going on, there is neither closure nor lockout is something which could not be concluded straightaway. The Learned Member refers to the closure notice dated 21st April, 1996 but holds that there is neither any closure nor lockout. In fact, the contents of the closure notice are proved. Similarly, the V.R.S. is also proved. Therefore, the relationship of employer-employee not surviving, how the grievance pertaining to lock-out survives is also not clear to me.

67. Such being the nature of the findings, to my mind, the case set up by Shri.Ganguli before me that this is a lockout which is illegal must fail. If there is a V.R.S. and subsequent cessation of relationship after accepting all sums thereunder, then, no question of lockout arises. The entire concept of lockout in the teeth of a Voluntary Retirement scheme unfolded before the learned Member, is

faulty to say the least, in law. There is no question of getting rid of any employees i.e. the complainants or keeping them away from work. The entire scheme was voluntary and the participation therein so also the acceptance of terminal dues and benefits thereunder. There is no threat nor the workers are misled. Merely because some business operations are going on does not mean that the closure must be termed as nothing but an illegal lockout. Hence, the conclusion drawn in Para 18 of the judgement with regard to the commission of the unfair labour practices is also not sustainable.

68. I am of the view that there is a cessation of relationship between the employer and the employee. It is doubtful as to whether the complaint of the nature presented could have been maintained at all. However, I have proceeded on the basis that assuming such a complaint could have been maintained, in the present facts and circumstances, I am of the view that the allegations of unfair labour practices alleged therein have not been proved at all. The petitioners cannot be said to be guilty of commission of unfair labour practices much less those alleged against them in the complaint.

69. In the above circumstances, I am unable to accept

the contentions of Shri.Ganguli and more particularly that the workers have been kept out deliberately and with a view to deprive them of work, all actions have been initiated. His reliance upon the decision of the Hon'ble Supreme Court in **Associated Rubber's Case (AIR 1986 SC Pg.1)** is misplaced. The conclusion reached by the Hon'ble Supreme Court therein is based on the findings peculiar in that case and cannot be applied to this case. The said decision is distinguishable. On the other hand, the reliance placed by Shri.Rele on the decision of this Court in **Shakti Electro Mechanical Industries (P) Ltd. v/s. F.N.Lala reported in 1974 (I) LL J Pg.1** is appropriate. The issue of illegal lock-out can be decided only in the backdrop of the relationship being continued. In this context, this is what is observed by the learned Single Judge : -

"14: It is now well-established that having regard to the above definition conditions of lock-out can continue in existence only when the relationship of employer and employee continues to exist between the concerned employers and workmen. Accordingly when the contract of employment is (rightly or wrongly)

terminated by an employer, the conditions of lock-out cannot continue to exist. This is, however, not to state that if the termination is found to be illegal and not binding on the workmen, the Tribunal may come to the conclusion that the termination being illegal was of no consequence and that, therefore, lock-out had continued by failure of the employer to continue to employ the concerned workmen. In cases in which in connection with the question of lifting of lock-out an employer relies upon termination of service, it would be necessary for the adjudicating Tribunal to investigate the facts relating to the termination of service and decide whether the termination was binding and legal. In cases in which the termination of service is found to be binding and legal, it would be impossible for the adjudicating Tribunal to hold that the lock-out had continued and required to be lifted. This is the direct result of the legal position that lock-out can exist only during the continuance of employer

and employee relationship between the concerned parties."

70. Similarly, the court below has overlooked the basic concept that in Industrial Law, a new company which is an independent Legal Entity cannot be straightaway called an Benamidar of another older organisation/firm because these are, in both, a person or family of persons (See 1968 (I) LL J Pg.15) Andhra Prabha Ltd. and others v/s. Madras Union of Journalists (by secretary) and others.

71. In the result, the Writ Petition succeeds. Rule is made absolute in terms of prayer clause (a). No order as to costs.

(S.C.Dharmadhikari, J.)